

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH MARION HEAD,)
Petitioner,)
)
v.) Civil Action No. 04-10522-
RGS)
)
STATE OF NORTH CAROLINA)
Respondent.)

MEMORANDUM AND ORDER

This habeas action was transferred from the Western District of Michigan to this Court. This Court reviewed the Petition, the Application to Proceed Without Prepayment of Fees and supporting papers, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts ("Rules Governing § 2254 Proceedings"). For the reasons set forth below, the Application to Proceed Without Prepayment of Fees is denied; the petition is summarily dismissed; and petitioner is advised that the continued filing of meritless actions may warrant an injunction barring him from filing additional lawsuits without the aid and signature of counsel or unless specifically authorized by the Court.

BACKGROUND

On February 23, 2004, Joseph Marion Head, a federal

prisoner¹ now confined to FMC Devens in Ayer, Massachusetts, filed in the Western District of Michigan his self-prepared Section 2254 habeas petition accompanied by an Application to Proceed Without Prepayment of Fees. See Docket, Head v. State of North Carolina, et al., C.A. No. 4-04-cv-00027-GJQ-HWB (W.D. Mich. Feb. 23, 2004). On February 26, 2004, petitioner filed his one-page Motion for Court Order seeking disclosure of certain information. See Docket No. 3, Head v. State of North Carolina, et al., C.A. No. 4-04-cv-00027-GJQ-HWB (W.D. Mich. Feb. 26, 2004). The petition names the State of North Carolina, the United States of American and Warden Winn as respondents and seeks to challenge petitioner's 1975 North Carolina conviction. See Petition, p. 1.

By Order dated March 10, 2004, this action was transferred to the District of Massachusetts finding that although venue lies in both North Carolina and Massachusetts, petitioner is presently incarcerated in Ayer, Massachusetts. See Docket No. 6, Head v. State of North Carolina, et al., C.A. No. 4-04-cv-00027-GJQ-HWB (W.D. Mich. Mar. 10, 2004). This action was received for filing by this Court on March 16,

¹Petitioner is now serving a 360-month sentence that was imposed pursuant to his convictions on nine counts of mailing threatening communications in violation of 18 U.S.C. § 876. See United States v. Head, No. 98-cr-102-ALL (W.D. N.C. Sept. 12, 2001).

2004. See Docket, C.A. No. 04-10522-RGS. The case file contains several pleadings accompanied by a clerk's notation that "these [pleadings] were received at various dates & were about to be rejected - the order of transfer came first."

Petitioner seeks to challenge his North Carolina conviction for second degree rape and crime against nature, which conviction was affirmed by the Court of Appeals of North Carolina on June 15, 1977. See State v. Head, 33 N.C. App. 494, 235 S.E.2d 423 (1977). The petition provides a vague description of his conviction as well as the alleged grounds for relief. See Petition, ¶¶ 1-4, 14-17(a). In response to the nine questions on the petition concerning his conviction, appeal and post-trial proceedings, petitioner simply states "see court records." See Petition, ¶¶ 5-13, 17(b)-19. The Petition is based upon several grounds for relief including allegations that (1) his conviction was obtained in violation of the laws or constitutions of the U.S.A. or N.C.," see id. at ¶ 14(A); (2) the "pre charge statements by victim and witness illegally obtained and used," see id. at ¶ 14(B); (3) the "alleged victim and witnesses trial testimony illegal," see id. at ¶ 14(C); and (4) "convictions (sic) was illegally obtained as evident of court records." See Id. at ¶ 14(D).

The Court's investigation, which included a search of

PACER, the federal judiciary's electronic public access system, reveals that petitioner has filed dozens of actions in several district courts of the United States. Mr. Head "has been involved in over 165 cases in the State of North Carolina and over 47 cases in the federal district courts, the majority of which were dismissed as either frivolously filed or filed in violation of pre-filing injunction orders issued by the North Carolina District Courts." See Head v. Williamson, C.A. No. 5:03-0063 (S.D.W.V. June 30, 2003) (Proposed Findings and Recommendations, Docket No. 6); see also United States v. Head, No. 4:98CR102 (W.D.N.C. Nov. 19, 2002) (Memorandum and Order, Docket No. 87). Because of his harassing conduct of flooding the Western District of North Carolina with frivolous petitions and motions, Mr. Head was directed to cease such activity and is subject to a pre-filing injunction. See In re: Joseph Marion Head, Jr., No. 4:93CV16, 1993 WL 266949 (W.D.N.C. Jan. 27, 1993).

REVIEW

Federal courts are authorized to dismiss any habeas petition that appears legally insufficient on its face. McFarland v. Scott, 512 U.S. 849, 856, 114 S. Ct. 2568, 129 L. Ed. 2d 666 (1994) (citing Rules Governing § 2254 Cases, Rule 4, 28 U.S.C. foll. § 2254). Rule 4 of the Section 2254 Rules

authorizes sua sponte dismissal of a petition "[i]f it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court...." Rules Governing § 2254 Cases, Rule 4(b), 28 U.S.C. foll. § 2254). A petition for a writ of habeas corpus may also be summarily dismissed if it fails to set forth facts that give rise to a cause of action under federal law. 28 U.S.C. § 2243; Marmol v. Dubois, 885 F. Supp. 444, 446 (D. Mass. 1994).

DISCUSSION

I. The Application to Proceed Without Prepayment of Fees

A party filing a habeas corpus petition must either (1) pay the \$5.00 filing fee for habeas corpus actions or (2) file an application to proceed without prepayment of fees on the form required by this Court. See 28 U.S.C. § 1914(a) (fees); Fee Schedule for the District of Massachusetts; 28 U.S.C. § 1915 (proceedings in forma pauperis).

Although petitioner filed an Application to Proceed Without Prepayment of Fees and Affidavit, in response to questions 3-6 he simply directs the Court to "see prison and court records." See Application, page 2. Moreover, he failed to submit a copy of his certified prison account statement.

Accordingly, his Application is subject to dismissal. Ordinarily, a petitioner would be granted additional time to resubmit his Application. However, because the petition is subject to dismissal, he will not be granted additional time to do so.

II. The Habeas Petition

Petitioner seeks to challenge his state court conviction of almost 30 years ago. He is now serving a federal prison sentence. In order for this court to have jurisdiction over petitioner's habeas claim, he must be "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). In addition, "the statutory language [requires] that the habeas petitioner be 'in custody' under the conviction or sentence under attack at the time his petition is filed." Maleng v. Cook, 490 U.S. 488, 490-91 (1989). Because petitioner is no longer in custody with respect to his expired state conviction, he cannot now challenge his state court conviction pursuant to Section 2254. Id.

III. Abusive Litigants May be Enjoined From Filing Claims Without Leave of Court

A district court has the power to enjoin litigants who abuse the court system by filing groundless and vexatious litigation. Elbery v. Louison, 201 F.3d 427, 1999 WL 1295871

at *2 (1st Cir. Dec. 17, 1999) (per curiam) (citing Cok v. Family Court of Rhode Island, 985 F.2d 32, 34 (1st Cir. 1993)). Petitioner is already subject to a pre-filing injunction issued by the United States District Court for the Western District of North Carolina. See In re: Joseph Marion Head, Jr., No. 4:93CV16, 1993 WL 266949 (W.D.N.C. Jan. 27, 1993).

Petitioner is hereby advised that the district court possesses the power to issue monetary sanctions for bad-faith behavior and that the repeated filing of factually and legally deficient actions may be considered a burden on this Court's time and resources warranting injunctive relief. See Castro v. United States, 775 F.2d 399, 408 (1st Cir. 1985) (per curiam) ("[I]n extreme circumstances involving groundless encroachment upon the limited time and resources of the court and other parties, an injunction barring a party from filing and processing frivolous and vexatious lawsuits may be appropriate."); accord Gordon v. U.S. Dep't of Justice, 558 F.2d 618, 618 (1st Cir. 1977) (per curiam) (same); Pavilonis v. King, 626 F.2d 1075, 1709 (1st Cir. 1980) (same).

Petitioner is advised that the continued filing of meritless actions may warrant an injunction barring him from filing additional lawsuits without the aid and signature of counsel or unless

specifically authorized by the Court.

ORDER

Petitioner's application for a writ of habeas corpus is DISMISSED pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

SO ORDERED.

Dated at Boston, Massachusetts, this 13th day of May, 2004.

/s/ Richard G. Stearns
RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE